

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Carlos G. Garcia,
Plaintiff
v.
Williams Gittre, et al.,
Defendant

Case No.: 2:20-cv-1441-JAD-VCF

Order Dismissing Case

Plaintiff Carlos Garcia brings this civil-rights case under § 1983 for events he alleges occurred during his incarceration at Ely State Prison.¹ On June 28, 2021, I ordered Garcia to file an amended complaint by July 28, 2021.² I expressly warned him that his failure to timely comply with the order would result in the dismissal of this case.³ The deadline has passed, and Garcia has not filed an amended complaint.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A court may dismiss an action with prejudice based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.⁵ In determining whether to

¹ ECF No. 3 (complaint).

² ECF No. 4 (order).

3 Id.

⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁵ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with
 2 local rules, the court must consider several factors: (1) the public's interest in expeditious
 3 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
 4 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
 5 availability of less drastic alternatives.⁶

6 I find that the first two factors—the public's interest in expeditiously resolving the
 7 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.
 8 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury
 9 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
 10 prosecuting an action.⁷ The fourth factor is greatly outweighed by the factors in favor of
 11 dismissal. Further, this factor is mitigated because § 1915 requires that, before docketing a
 12 complaint filed by an inmate, I must identify and dismiss any claims that are frivolous,
 13 malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a
 14 defendant who is immune from such relief.⁸ I dismissed Garcia's federal claims because he
 15 failed to plead a cognizable claim upon which relief could be granted.⁹ A court's warning to a
 16 party that his failure to obey the court's order will result in dismissal satisfies the consideration-
 17 of-alternatives requirement.¹⁰ Garcia was warned that his case would be dismissed with
 18 prejudice if he failed to file an amended complaint by July 28, 2021.¹¹ So, Garcia had adequate
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21 ⁶ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
 22 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

23 ⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

24 ⁸ See 28 U.S.C. 1915A.

25 ⁹ ECF No. 4 (dismissing Garcia's state-law claims without prejudice, but without leave to amend,
 26 because he must sue state employees for claims under state law in state court).

27 ¹⁰ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ¹¹ ECF No. 4.

1 warning that his failure to file an amended complaint by the deadline would result in this case's
2 dismissal.

3 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** with prejudice
4 based on Carlos Garcia's failure to file an amended complaint in compliance with this court's
5 June 28, 2021, order; and

6 The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS
7 CASE.

8 IT IS FURTHER ORDERED that Plaintiff's Application for Leave to Proceed *in forma*
9 *pauperis* (ECF. No. 1) is DENIED as moot.

10 The Court further **certifies** that any *in forma pauperis* appeal from this order would **not**
11 be taken "in good faith" under 28 U.S.C. § 1915(a)(3).

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14 U.S. District Judge Jennifer A. Dorsey
15 Dated: August 14, 2021